(2)

No. 88-266

In The

Supreme Court of the United States

October Term, 1988

STATE OF OKLAHOMA, ex rel,

Petitioner,

v.

JAN GRAHAM, et al.,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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QUESTIONS PRESENTED

To more accurately state the questions presented by the Circuit Court's decision than those set forth in the Petitioner's petition, Respondent suggests the following:

1. Was the Circuit Court correct in affirming an order of the district court dismissing this cause where it was determined that the state court from which it was removed did not have subject matter jurisdiction?

2. Do the state or federal courts have jurisdiction over Indian tribes absent a valid waiver of sovereign immunity from suit by either the tribe or Congress?

LIST OF PARTIES

The Petitioner is the State of Oklahoma ex.rel. Oklahoma Tax Commission. The respondents are the Chickasaw Nation and its employee, Jan Graham.

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

To the Honorable, the Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

The respondents, Jan Graham and the Chickasaw Nation, defendants-appellees in the courts below, respectfully pray the Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit docketed on August 12, 1988 be denied.

OPINIONS BELOW

The order and judgment of the Court of Appeals, which is reported at 846 F.2d 1258, appears in Appendix A to the Petitioner's petition. The order of this Court which is reported at 108 S.Ct. 481 appears in Appendix B to Petitioner's petition. The orders of the United States District Court for the Eastern District of Oklahoma appear in Appendices D, E, and F to Petitioner's petition.

JURISDICTION

Petitioner invokes the jurisdiction of this Court under 28 U.S.C. 1254(1).

RESTATEMENT OF THE CASE

The Chickasaw Nation of Oklahoma is one of the Five Civilized Tribes and is federally recognized and protected. It was removed to South Central Indian Territory in the early nineteenth century. Sulphur, Oklahoma is located within the Tribe's original territory after removal and within its present day governmental territory according to its constitution. (App. A Preamble) The Tribe purchased the Chickasaw Motor Inn at Sulphur, Oklahoma in 1972 as a tribal economic development project. The title to the lands on which the motel is situated is vested in the United States of America in trust for the Tribe. Contrary to the State's assertation that the motel is "off-reservation", the United States District Court for the Eastern District of Oklahoma in another case involving

bingo gaming at the Chickasaw Motor Inn, has determined it to be situated on "Indian Country".[1] Pursuant to an Act of the Chickasaw Legislature (App. C), the Tribe conducts bingo games in a small meeting room at the motel which has a capacity of less than 100 persons. It also engages in the sales of concessions, including tobacco products. It does not collect or pay state sales taxes.

This action was commenced in the District Court of Murray County, Oklahoma on October 18, 1985. The prayer for relief in the State's complaint, sought to temporarily and permanently enjoin the Tribe from engaging in sales of tobacco, operating the bingo game and from conducting any business at the Chickasaw Motor Inn and Restaurant until complete and accurate reports are filed with, and all taxes paid to, the Oklahoma Tax Commission. The state district court immediately granted an ex parte temporary order enjoining the Chickasaw Nation and its motel manager, Jan Graham, from selling unstamped cigarettes and operating bingo games.

The Tribe and defendant Graham removed the action to the United States District Court for the Eastern District of Oklahoma. The State moved to remand to the state court contending that there was no federal question jurisdiction. Its motion was overruled. The Tribe and defendant Graham then moved to dismiss for lack of subject-

[1] *Chickasaw Nation, et al. v. The State of Oklahoma ex rel. Fred Collins, District Attorney for Murray County, Oklahoma, et al.*, Case No. 86-32-C. A copy of the Court's unpublished and unappealed from decision is attached as Appendix B.

matter jurisdiction on the basis of the Chickasaw Nation's sovereign immunity from unconsented suits and the absence of any allegations in the complaint of a valid waiver thereof. The Court sustained the motion to dismiss. The decision was affirmed by the United States Court of Appeals for the Tenth Circuit.

This Court then granted the State's Petition for Writ of Certiorari, vacated the judgment of the Appeals Court and remanded to the Tenth Circuit for further consideration in light of *Caterpillar, Inc. v. Williams*, 482 U.S. ___, 107 S. Ct. 2425 (1987).

On remand, the Tenth Circuit distinguished *Caterpillar* finding that the State's complaint was not "well-pleaded" as was the situation in *Caterpillar* and following the holding of this Court in *Lambert Run Coal Co. v. Baltimore & Ohio R.R. Co.*, 258 U.S. 377 (1922) reaffirmed that the case was properly dismissed rather than remanded to the state court.

REASONS FOR DENYING THE WRIT

The primary issue in this cause is whether the federal district court below should have remanded or dismissed after the case was removed from the state district court. On remand from this Court, the Circuit Court determined that the state court did not have subject matter jurisdiction because the State's complaint attempting to allege a state law cause of action against a federally recognized and protected Indian tribe failed to allege necessary jurisdictional facts i.e. Congressional or tribal waiver of sovereign immunity from unconsented suit. The Circuit Court

reasoned that when this case was removed derivative jurisdiction on removal was necessary and where the state court was without subject matter jurisdiction dismissal was proper. *Lambert Run Coal Co.* It followed well-established law and determined that dismissal rather than remand was required.

The State, without demonstrating any legal basis for it, urges this Court to find that the state court had jurisdiction notwithstanding the absence of tribal or congressional waiver of sovereign immunity. Alternately, the State admits on page 9 of its petition that "Safe in knowledge that Congress had not authorized this lawsuit, the Tenth Circuit affirmed the dismissal of the State's action. . . .". It urges this Court's review for the purpose of seeking to overturn a concept deeply rooted in this country's history and confirmed hundreds of times over the years by this Court. It is astoundingly asking this court to strip Indian tribes of their inherent sovereign immunity from unconsented suit in order that the States can enforce their laws over tribal activities on tribal lands. This proposition is advanced with complete disregard for the fact that constitutionally this is a decision for the Congress[2] and not this Court.

[2] Article I, Section 8, Cl. 3, United States Constitution.

ARGUMENT

I. THE CIRCUIT COURT CORRECTLY DISTINGUISHED THIS CASE FROM *CATERPILLAR* AND APPLIED THIS COURT'S TEACHINGS AND MANDATE IN *LAMBERT RUN COAL CO.* IN REAFFIRMING THE TRIAL COURT'S REFUSAL TO REMAND

The State argues that its complaint well-pleads an action founded entirely on state law. It contends that the face of the complaint was "void of any reliance on federal law" and, therefore, there is no federal question jurisdiction. Respondents disagree. This is an action to impose a state tax on activities of an Indian tribe in Indian Country. The right to impose that tax must come from federal law. Likewise, the sovereign immunity from suit Indian tribes possess is inherently rooted in federal common law. Neither right is defined by state law as the State urges. These are areas that are completely preempted by federal law which this Court in *Caterpillar* recognized as an "independent corollary to the well-pleaded complaint rule". A similar question arose in *Oneida Indian Nation v. County of Oneida*, 414 U.S. 685 (1974) where the Oneida Indian tribe brought suit in federal court to recover certain lands held by two counties in New York. The defendants challenged the Court's federal question jurisdiction under the "well-pleaded complaint" rule. This Court conceded that the complaint actually just alleged a state law cause of action for ejectment. However, the Court declined to apply the well-pleaded complaint rule because the case involved an Indian tribe claiming possessory rights to land which emanated from federal law. In Mr. Justice White's opinion for the Court, he said:

> "Accepting the premise of the Court of Appeals that the case was essentially a possessory action, we are of the view that the complaint asserted a current right to possession conferred by federal law, wholly independent of state law.. . . .The federal law issue, therefore, did not arise solely in anticipation of a defense. Moreover, we think that the basis for petitioners' assertation that they had a federal right to possession governed wholly by federal law cannot be said to be so unsubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise so completely devoid of merit as not to involve a federal controversy within the jurisdiction of the District Court, whatever may be the ultimate resolution of the federal issues on the merits."

The Court then quoted with approval from *United States v. Farmers*, 125 F.2d 928 (CA2), cert denied sub nom *City of Salamanca v. United States*, 316 U.S. 694 (1942) and said:

> " 'State law cannot be invoked to limit the rights in lands granted by the United States to the Indians, because, as the court below recognized, state law does not apply to the Indians except so far as the United States has given its consent.' Id at 932 There being no federal statute making the statutory or decisional law of the State of New York applicable to the reservations, the controlling law remained federal law; and, absent federal statutory guidance, the governing rule of decision would be fashioned by the federal court in the mode of the common law."

It is noteworthy that had the *Oneida* case not involved an Indian tribe asserting rights to land arising out of federal law, the well-pleaded complaint rule would have applied because the complaint simply alleged an action in ejectment. It parallels this case because there is no federal statute which makes Oklahoma's tax statutes

applicable to the Chickasaws. Appellees submit that the alleged right of the Chickasaws to be free of state taxation of their activities on tribal lands and to be immune from suit without valid waiver of sovereign immunity are rights which are no less significant than tribal rights to land ownership. Respondents submit that these are areas completely pre-empted by federal law and federal question jurisdiction was present.

But, the State misses the point when it concludes that the lower court's decision affirming dismissal rather than ordering remand turned on the finding of federal question jurisdiction. Whether the case was removed properly or improperly was not the issue. When a case is removed to the federal district court, it is removed. It is not a question of whether the federal court will accept it but, rather, what disposition will be made of it if it is subsequently determined that it was not within the federal court's jurisdiction. Removal does not depend on securing leave from either the state or the federal court, although the propriety of removal may be tested later in the federal court by a motion to remand. *Wright, Miller & Cooper 500, Section 3730 Procedure for Removal-14A Federal Practice and Procedure.* If there is exclusive state jurisdiction or concurrent state and federal jurisdiction, but the plaintiff has well-pleaded its complaint strictly with a state law cause of action, the case will be remanded to the state court. Under the law in effect at the time this matter was removed[3] if exclusive jurisdiction was vested in the federal court, it proceeded to determine the issues unless the state court from which it was removed did not have jurisdiction. If the state court was without subject matter jurisdiction, the federal court was without the necessary

derivative jurisdiction and was required to dismiss rather than remand. *Minnesota v. United States,* 305 U.S. 382 (1939).

As is previously noted, this case was remanded to the Tenth Circuit Court for reconsideration in light of *Caterpillar.* On remand the lower court correctly distinguished *Caterpillar.* There the plaintiffs had the option of either bringing an action created by state law or one created and governed by federal law. They proceeded under the state created cause of action in contract over which the state court had jurisdiction and, as noted by this court, their complaint was well-pleaded in that it did not facially involve a federal question.

The Circuit Court on remand, distinguished the instant case because the State was asserting a state created cause of action against a sovereign entity, whose sovereignty is created and defined by federal law. The Court said:

> "The named defendant is the Chickasaw Nation, a sovereign entity whose status is subject to and limited by congressional power alone. See *Merrion v. Jicarilla Apache Tribe,* 455 U.S. 130 (1982). Thus, as we noted in our prior opinion, absent its consent, the

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[3] This rule was abolished on June 19, 1986 after this cause was removed by amendment to 28 U.S.C. 1441. Subparagraph (e) now provides:

> "The Court to which such civil action is removed is not precluded from hearing and determining any claim in such civil action because the State court from which such civil action is removed did not have jurisdiction over that claim."

Chickasaw Nation is subject to suit only under conditions prescribed by Congress. *State of Okla. ex rel. Oklahoma Tax Comm. v. Graham*, 822 F2d 951, 956 (10th Cir. 1987) Page 3."

The Circuit Court then correctly concluded that a complaint asserting a state created cause of action to impose a state tax in a state court against an Indian tribe on its commercial activities on tribal lands must affirmatively allege tribal or congressional waiver of immunity from suit to be "well-pleaded". See also *Puyallup Tribe, Inc. v. Department of Game of Wash.*, 433 U.S. 165 (1977). The Court said that the State's complaint was not well-pleaded because it had failed to allege either tribal or congressional waiver of the Tribe's immunity from suit. It stated on page 4 of its decision:

> " . . . the absence of this essential element of subject matter jurisdiction is the essence of the federal question inherit in the State's action.
>
> In short the complaint showed that the state district court was patently without jurisdiction over either the parties or the subject matter."

It is well-established that even if it is subsequently determined that subject matter jurisdiction does not exist, a federal court has threshold jurisdiction to determine the extent of its jurisdiction over an action. *Land v. Dollar*, 330 U.S. 731, 739 (1947), *Chicot County Drainage District v. Baxter State Bank*, 308 U.S. 371, 376 (1947). As previously stated, it was also well-established, prior to the 1986 amendment to 28 U.S.C. 1441, a federal court acquired no jurisdiction in a case removed from a state court if the state court did not have jurisdiction. Threshold jurisdiction was necessary to decide if this derivative jurisdiction was present.

Having determined that the state court was without jurisdiction and that the complaint was not well-pleaded, the lower court then had to decide what disposition of the case was proper. Instead of applying *Caterpillar* regarding whether this case should have been remanded or dismissed, the Circuit Court followed this Court's teachings in *Lambert Run Coal Co.*[4]

In *Lambert Run* a coal mining company sued the railroad in state court to restrain it from obeying orders of the Interstate Commerce Commission. The railroad removed to federal court and then moved to dismiss. The trial court overruled the motion to dismiss and the injunctive relief was granted. The Fourth Circuit Court of Appeals reversed on grounds other than those raised in the trial court. This court affirmed but ordered the case dismissed rather than remanded.

Mr. Justice Brandies speaking for the Court said:

> " . . . As the state court was without jurisdiction over . . . the subject matter. . . ., the district court could not acquire jurisdiction. . . .by removal. The jurisdiction of the federal court on removal is in a limited sense, a derivative jurisdiction. If the state court lacks jurisdiction of the subject matter or the parties, the federal court acquires none, although it might in a like suit, originally brought there, have had jurisdiction."

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[4] In light of the importance accorded it by the Circuit Court and the fact that it is the basis for the ruling reaffirming dismissal, it is interesting to note that the State has completely neglected to address *Lambert Run Coal Co.* It is equally interesting to note that the minority opinion in the lower court ignores it.

* * * *

"The District Court should, therefore, have dismissed the bill as soon as it became apparent that the suit was one to set aside an order of the Commission. . . . and the Circuit Court of Appeals, in remanding the cause to the district court, should have directed a dismissal for want of jurisdiction and without prejudice."

For other decisions requiring the same result see *General Investment Co. v. Lake Shore & M.S.R. Co.*, 260 U.S. 261, 288, 67 L.Ed.2d 244, 260, 43 S.Ct. 117 (1922); *Minnesota v. United States*, 305 U.S. 382 (1939); *Venner v. Michigan C.R. Co.*, 271 U.S. 127 (1926); *Goodrich v. Burlington Northern R.R. Co.*, 701 F.2d 129 (10th Cir. 1983). *State of Washington v. American League of Prof. Base Clubs*, 460 F.2d 654 (9th Cir. 1972); *Koppers Company v. Continental Casualty Company*, 337 F.2d 499, 502 (8th Cir. 1964).

The state relies heavily on *Franchise Tax Board of the State of California v. Construction Laborers Vacation Trust for Southern California*, 463 U.S. 1 (1983) in support of its position that this matter should be remanded to the state court. But, the court there was dealing with a well-pleaded complaint in a state court action wherein jurisdiction was effectively pleaded and invoked. Not so here. Even this court in *Franchise Tax Board* recognized the rule in *Lambert Run* at footnote numbered 27 of the opinion which states:

"Indeed, precedent involving other statutes granting exclusive jurisdiction to the federal courts suggests that, if such an action were not within the class of cases over which the state and federal courts have

concurrent jurisdiction, the proper course for a federal district court to take after removal would be to dismiss the case altogether, without reaching the merits." (citing some of the above cited authorities)

Here, the state court clearly did not have jurisdiction because the complaint fails to allege necessary jurisdictional facts i.e. waiver of sovereign immunity.

The State next relies on *Gully v. First National Bank*, 299 U.S. 109 (1936) for the proposition that this matter should be remanded to the state court. Respondent does not take issue with the principles set forth in Mr. Justice Cardoza's well written opinion, but *Gully* is clearly distinguishable on the facts and the law involved in the Circuit Court's decision in this case. In *Gully*, the issue was whether there was federal question jurisdiction for removal purposes where the right to recover was dependent upon a federal statute. The defendant in *Gully* did not contend that the state court was completely without jurisdiction nor was that issue addressed. The Court simply held that the fact the cause involved interpretation of a federal statute did not necessarily create federal question jurisdiction.

The State says on page 6 of its petition that the *Gully* court found that in cases involving state taxation, it is impossible to plead a federal question. Respondents disagree. Application of state tax laws to Indian tribes must necessarily involve a federal question because it must be alleged how the state's courts were vested, by either the Tribe or Congress, with the authority to apply and enforce those laws. States may not unilaterally invest themselves with jurisdiction over Indian tribes. Therefore, in this context, it is not impossible to well-plead

how subject matter jurisdiction is present i.e. simply plead tribal or congressional waiver. The lower courts in this case found that it had not been pleaded and very pragmatically understood that it could never be successfully asserted. Had a valid waiver been present, the state would surely have alleged it.

Here the State is clearly attempting to enforce its tax laws against a sovereign entity without the consent of the Congress or the Tribe. The common law immunity of Indian tribes is coextensive with the immunity of the United States and can only be waived by express and unequivocal consent of the tribe or Congress. *United States v. United States Fidelity and Guaranty Co.*, 309 U.S. 506 (1940); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58-59. In *Minnesota*, supra, the United States was a party defendant in a suit by the state. The United States removed to federal court and contended that the state court was without jurisdiction. This Court affirmed the Appeals Court's directive to dismiss. The co-extensive common law immunity of the Chickasaw Nation and its officers with that of the United States required the same result.

The Tenth Circuit Court determined, in exercising its threshold jurisdiction to determine jurisdiction, that both the state court from which the case was removed and the federal district court to which it was removed were without subject matter jurisdiction based on longstanding, well-established federal law. In accordance with principles laid down by the *Lambert Run* court it determined that the case was properly dismissed rather than remanded. The logic behind this rule is clear. Where neither court has subject matter jurisdiction, the federal

court does not have jurisdiction to make an order to remand but may only dismiss. The lower court's decision was not in conflict with this Court's decisions and does not require review.

II. DISMISSAL OF THIS ACTION BY THE LOWER COURT WAS MANDATED BY LONGSTANDING FEDERAL POLICY AND THE DECISIONS OF THIS COURT HOLDING THAT INDIAN TRIBES ARE IMMUNE FROM SUIT IN STATE OR FEDERAL COURTS ABSENT CONGRESSIONAL OR TRIBAL WAIVER

The State seeks to make the issue here something other than those involved in the complained of decision by the lower court. The State argues that it is entitled to a decision on the merits that results in application of its tax laws. But, the lower court properly did not reach the merits. Its decision strictly adhered to the issues raised by the preliminary motions and held that subject matter jurisdiction was not present because sovereign immunity barred this action in either the state or federal court.

This Court has consistently and without exception adhered to its longheld principle that Indian tribes are immune from suit absent unequivocally expressed consent by the Tribe or Congress. *United States v. United States Fidelity & Guar. Co.*, 309 U.S. 506, 512 (1940); *United States v. Wheeler*, 435 U.S. 313, 323 (1978); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58. (A complete listing of all of this Court's decisions affirming this rule would probably exceed the amount of space allocated to respondent by the Court's rules.) The issue of sovereign immunity goes to the subject matter jurisdiction of the Court

since a sovereign is immune from suit except as its consents to be sued, and the terms of its consent to be sued in any court defines that court's jurisdiction to entertain the suit. *United States v. Mitchell*, 445 U.S. 535, 538 (1980); *Lehman v. Nakshian*, 453 U.S. 156, 160 (1981); *United States v. Testan*, 424 U.S. 392, 399 (1976). Sovereign immunity applies "inspective of the merits" of the claim asserted against the tribe. *Rehner v. Rice*, 678 F.2d 1340, 1351 (9th Cir. 1982), rev'd on other grounds, 463 U.S. 713 (1983). The State has not cited a single decision where this Court or any other federal court has deviated from the traditional rule.[5]

In fact, except for a lone Oklahoma Supreme Court decision, which is hereinafter discussed, none of the State's authorities involve situations where a tribe was a defendant and asserted sovereign immunity in its resistance to jurisdiction. The State is asking this court to overrule almost 200 years of precedent and strip Indian tribes of their inherent sovereignty to allow it to enforce its tax laws against them. It would have this Court remove both the United States Congress and the tribal governments from the process of determining when an Indian tribe had waived its sovereignty. In effect, it would have this Court, by decision amounting to purely impermissible legislation, reduce all Indian tribes in this country to mere social clubs completely subservient to the states and other local governments. This would effectively terminate Indian tribal governments. Respondent

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[5] The State contends that the Circuit Court's decision is in conflict with *McClanahan v. State Tax Comm'n of Arizona*, 411 U.S. 164. *McClanahan* did not even involve an Indian Tribe as a party. There, an individual tribal member initiated the litigation.

submits that should that concept ever become the policy of this country, the Congress will be the constitutionally appropriate branch of the federal government to establish it.

The State cites *State ex rel. May v. Seneca-Cayuga Tribe*, 711 P.2d 77 (Okla. 1985) on which it places much emphasis for its proposition that sovereign immunity is not a bar to this suit. It contends that because *Seneca-Cayuga* conflicts with decisions of the Tenth Circuit Court the instant case merits review. With regard to its being in conflict with the decisions of the Circuit Court, the State is correct but *Seneca-Cayuga* is also contrary to this Court's decisions. Respondents are unaware of any federal court that has accepted the Oklahoma Court's reasoning in holding the states' courts have jurisdiction over Indian tribes without regard to sovereign immunity. In fact, when *Seneca-Cayuga* was remanded to the trial court after its dismissal was reversed, the United States District Court for the Northern District of Oklahoma enjoined the state trial court from proceeding any further. *Seneca-Cayuga Tribe of Oklahoma v. State of Oklahoma, et al.* No. 85-C-639-B consolidated with *Quapaw Tribe of Oklahoma v. State of Oklahoma, et al.* No. 86-C-393-B (N.D. Okla. June 5, 1986).[6] *Seneca-Cayuga* is so totally unique in being absolutely out of step with the decisions of this Court and that of all other federal courts, it has been uniformly rejected. The Oklahoma court, in its radical departure from traditional federal law, determined that the state courts had jurisdiction over Indian tribes on Indian country for purposes of regulating bingo gaming without the consent of the tribes or Congress. This unusual conclusion was reached against the backdrop of specific findings by that

Court that the activity was being conducted on "Indian Country" and that Oklahoma had not taken steps to comply with the requirements of Public Law 83-280, 67 Stat. 77 and 82 Stat. 77 (codified at 25 U.S.C. 1321-1323) App. E, F and G.

In its backdoor attempt to exercise jurisdiction over these Indian tribes, the court invoked a concept entirely new to Oklahoma jurisprudence and reasoned that the state courts had "residuary jurisdiction" on Indian Country. It said that residuary jurisdiction "is used to invest state courts with jurisdiction interstitially when the subject matter of cognizance does not infringe upon tribal self-government and has not been pre-empted by congressional legislation". The Oklahoma Court bottomed its position on *Three Affiliated Tribes v. Wold Engineering*, 467 U.S. 138 (1984). This application of *Wold* was clearly misguided for at least two reasons. First, *Seneca-Cayuga* involved a situation where the Indian tribe was resisting the attempts to invoke state court jurisdiction. In *Wold* the Indian tribe sought to avail itself of the state court to pursue a claim against a non-Indian for activities occurring on Indian land. The second reason *Wold* is inapplicable is that there is no basis in Oklahoma for "residuary jurisdiction". Oklahoma had never taken any action prior to passage of Public Law 83-280 to exercise jurisdiction over Indian tribes as was the case in *Wold*. Nor has it subsequently taken the necessary steps to acquire jurisdiction under PL-280. *Seneca-Cayuga*. *Wold* simply held

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[6] This case is on appeal to the Tenth Circuit Court and has not been published. Therefore, the Court's decision is attached as Appendix D.

that while PL-280 does not divest a state of pre-existing and lawfully obtained jurisdiction, it provides no basis for a state which has made no such jurisdictional claim to accomplish by silence what Congress intended it to do under the terms of PL-280.

In light of the Oklahoma Supreme Court's predisposition to assume jurisdiction of tribal activities on Indian country, there should be no doubt why the State would like to have this matter remanded to its courts. A decision in the state court's conforming to federal law would require a complete and unlikely reversal of *Seneca-Cayuga*. Anything short of that would force the respondents to seek certiorari with this Court and the State is apparently willing to gamble on the odds that such a decision might not receive review by this court.

Finally, the State relies on *Oklahoma Tax Commission v. United States*, 319 U.S. 598 (1943) in its quest for jurisdiction of its courts to tax Indian tribes. However, *Oklahoma Tax Commission* was not about taxing Indian tribes, sovereign immunity from suit, nor was an Indian tribe a party to the litigation. This was an action instituted by the United States to recover inheritance taxes imposed on transfers of estates of deceased Indians where this Court limited recovery to lands exempt from direct taxation. It does not address any of the issues properly before this Court.

Although respondents do not believe that the issue of whether the State may apply or not apply its sales taxes to the Indian tribes on Indian country is properly before this Court, it will be addressed briefly because the State in its petition has sought to interweave that issue with

the lower court decision it seeks to have reviewed. This Court recently rejected a petition for review of a case which presented the same issue. In *Indian Country, U.S.A., Inc. and Muskogee (Creek Nation) v. State of Oklahoma*, 829 F.2d 967 (10th Cir. 1987 cert. denied June 27, 1988), the Oklahoma Tax Commission sought to apply its sales tax laws to gross receipts from bingo and concessions of a bingo gaming enterprise being conducted by the Creek Nation in Tulsa, Oklahoma. The Tribe sought injunctive relief in the federal district court. The Court ruled that the State of Oklahoma could not apply its tax laws to the tribal activities. The Circuit Court affirmed. The Court applied the federal pre-emption and infringements tests enunciated by this Court in *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142-143 (1980) concluding: "the state's interest in taxing Creek bingo and related activities is minimal, and is incompatible with and outweighed by federal and tribal interests". The Court further stated:

> "The State also has a general interest in taxing its residents for whom it provides services. Nevertheless, this interest is substantially diminished when the residents engage in activities largely beyond the state's jurisdiction and control, unless the activity or circumstance somehow undermine the state's ability to protect its economy and tax base. As already discussed, this is not the case with respect to Creek Nation bingo. Moreover, the State has pointed to no services that it provides on Creek Nation lands that would justify the tax."

In closing, the State attempts to paint a picture of Oklahoma's Indian tribes sponging off the state and unfairly competing with non-Indian businesses. It neglects to mention that these tribal businesses were

established with the encouragement and pursuant to the policies of the federal government. The State omits the fact that income from these businesses is vitally needed to provide social and health benefits to poor Indians where there is a void in state services. Nor does it assert that the business community has complained about the jobs and revenues generated in rural communities and other places by these economic efforts of Indians in pursuit of established federal and tribal goals aimed toward improving the lives of a socially neglected people. "Moreover, the State has pointed to no services that it provides on [Chickasaw] lands that would justify the Tax." *Indian Country, USA*. Respondent submits that these persistent efforts to tax sovereign Indian tribes is a result of the pressures applied to the Tax Commission by the irresponsible spending habits of what has been termed, by most of Oklahoma's metropolitan press, as the worst "pork-barrel" legislature in the country. Perhaps, funding fewer make-work projects for relatives of legislators and such events as rattlesnake hunts and cowchip throwing contests by the legislature would relieve some of that pressure.

CONCLUSION

The decision of the Circuit Court in this case was not about the right to tax or not to tax as the state would have it be. The issue was whether, procedurally, the district court should have remanded to the state court or dismissed. Dismissal of this matter was in conformity to this Court's rule as set forth in *Lambert Run Coal* and *Minnesota* where it was clear that neither the state nor the

federal court had subject matter jurisdiction. There are no novel issues presented nor is the lower court's decision in conflict with the decisions of this court. As a result, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX A

CONSTITUTION OF THE CHICKASAW NATION OF OKLAHOMA

PREAMBLE

We, the people of the Chickasaw Nation, acknowledging with gratitude the grace and beneficence of God, in permitting us to make choice of our own form of government, do, in accordance with the first, second, fourth and seventh articles of the Treaty between the United States, the Choctaws and Chickasaws, made and concluded at Washington City, June 22, A.D. 1855, and the Treaty of April 28, A.D. 1966, ordain and establish this Constitution for our government, within the following limits, to-wit:

Beginning on the north bank of Red River, at the mouth of Island Bayou, where it empties into Red River, about twenty-six miles on a straight line below the mouth of False Washita, thence running a northwesterly course along the main channel of said bayou to the junction of the three prongs of said bayou nearest the dividing ridge between Washita and Low Blue Rivers, as laid down on Captain R.L. Hunter's map; thence northerly along the eastern prong of said Island Bayou to its source; thence due north to the Canadian River; thence west along the main Canadian to the ninety-eighth degree of west longitude; thence south to Red River and thence down Red River to the beginning;

Provided; however, if a line running due north from the eastern source of Island Bayou to the main Canadian, shall not include Allen's or Wapanucka Academy within the Chickasaw District, then an off-set shall be made from

said line, so as to leave said academy two miles within the Chickasaw District, north, west and south from the lines of boundary.

ARTICLE I
NAME

The name of this body shall be "the Chickasaw Nation."

ARTICLE II
CITIZENSHIP

Section I. This Chickasaw Nation shall consist of all Chickasaw Indians by blood whose names appear on the final rolls of the Chickasaw Nation approved pursuant to Section 2 of the Act of April 26, 1906, (34 Stat. 137) and their lineal descendants.

Section 2. The Tribal Legislature shall have the power to enact ordinances governing future citizenship and loss of citizenship in the Chickasaw Nation.

ARTICLE III
RIGHTS OF SUFFRAGE

Section 1. All citizens eighteen (18) years of age or older shall be deemed qualified electors under the authority of this Constitution; provided, they have duly registered to vote.

Section 2. No enrolled member of another tribe or person who votes as a citizen or member of another tribe shall be eligible to vote.

ARTICLE IV
BILL OF RIGHTS

Section 1. Nothing in this Constitution shall be interpreted in a way which would change the individual rights and privileges the tribal members have as citizens of the Chickasaw Nation, the State of Oklahoma, and the United States of America.

Section 2. All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit; and they have at all times the inalienable right to alter, reform or abolish their form of government in such a manner as they may think expedient; provided, such action is taken pursuant to this Constitution.

Section 3. No religious test shall ever required as a qualification for any office of public trust in this Nation.

Section 4. Every citizen shall be at liberty to speak, write, or publish his opinions on any subject, being responsible for the abuse of that privilege, and no law shall ever be passed curtailing the liberty of speech, or of the press.

Section 5. The citizens shall have the right, in a peaceable manner, to assemble together for their common good, and to apply to those invested with powers of government; for redress of grievances or other purposes, by address, or remonstrance.

ARTICLE V
DIVISION OF THE POWERS OF GOVERNMENT

Section 1. The powers of the government of the Chickasaw Nation shall be divided into three (3) distinct departments: 1. Legislative 2. Executive 3. Judicial. No person or collection of persons, being one of those

departments, shall exercise any power properly attached to either of the others.

Section 2. The officers of the Nation are to include all elective officials.

ARTICLE VI
LEGISLATIVE DEPARTMENT

Section 1. The Legislative authority of the Chickasaw Nation shall be vested in the Tribal Legislature.

Section 2. Members of the Tribal Legislature must be citizens of the Nation and have been residents of the Nation for at least one (1) year and of their respective district for at least six (6) months immediately preceding the election. They must remain residents of their elected district during the tenure of their office. They must be registered to vote and be at least twenty-five (25) years of age to serve as members of the Tribal Legislature.

Section 3. The Tribal Legislature shall consist of thirteen (13) members to be elected from the following districts according to an apportionment plan prescribed by the Tribal Legislature: Panola, Pickens, Tishomingo, Pontotoc. The district boundaries are as follows:

Panola District – Commencing at the mouth of Island Bayou, on the north bank of Red River, thence up said bayou to the line between the Chickasaws and Choctaws, thence along said line to Blue River, then up Blue River to the road that leads from Fort Washita to Fort Smith, where it crosses Blue River at Andrew Colbert's, thence along said road to Hatsborough, thence along the road that leads from Hatsborough to Tiner's, where it crosses Washita River, thence down said river to where it empties into Red River, thence down said river to the beginning point.

Pickens District – Commencing on the north bank of Red River, at the mouth of Washita River, thence up Red River to the 98th Meridian Line, thence north along said line to where it crosses Washita, down Washita to the beginning point.

Tishomingo District – Commencing where the road crosses Blue River that leads from Fort Washita to Fort Smith, at Andrew Colbert's, thence up Blue River to the fork above the old Dragoon crossing, thence up the eastern prong to the road which leads from Fort Arbuckle to Fort Smith, thence along said road to the crossing of the Washita River, thence down said river to the line of the Panola District, thence along said line to the beginning point.

Pontotoc District – Commencing on the east bank of Blue River, where the line crosses which runs between the Chickasaws and Choctaws, thence along said line to the Canadian River, thence up said river to the 98th Meridian Line, thence south along said line to Washita River, thence down said river to the line of the Tishomingo District, thence along said line to the line of the Panola District, thence down said line to the beginning point.

Section 4. For the first election under this Constitution, the thirteen (13) positions on the Tribal Legislature shall be apportioned among the four (4) districts pursuant to the number of registered voters who reside in each district together with those non-resident registered voters who formally designated their affiliation with one (1) of the four (4) districts. Each district shall have at least one (1) representative on the Tribal Legislature. Each nonresident registered voter shall choose one (1) district for the purpose of voting to choose a representative on the Tribal Legislature. On the date successful candidates are installed in office, there shall be a drawing of lots for each district to determine which representative will serve

for a three (3) year term. There shall be a second drawing of lots among the remaining nine (9) members of the Tribal Legislature to determine those five (5) who are to serve two (2) year terms and the four (4) who will each hold office for one (1) year, in order to establish a system of staggered terms of office. In the event of a tie vote in the initial election, the flip of a coin will determine the winner. Thereafter, members of the Legislature shall be elected for three (3) year terms and shall serve until their successors are duly elected and installed.

Section 5. Within nine (9) months following the first election of officials under this Constitution, the Tribal Legislature shall adopt a plan for reapportionment based on the number of registered voters of the four (4) districts, including those nonresidents who affiliate with each district. Apportionment based on the number of registered voters shall be used until such time a more reliable means can be established pursuant to legislative action.

Section 6. No person who has been convicted of a felony by a court of competent jurisdiction, shall be considered eligible for office in the Tribal Legislature.

ARTICLE VII
PRIVILEGES, DUTIES AND POWERS OF LEGISLATIVE DEPARTMENT

Section 1. The Tribal Legislature, at its first regular session each year, shall organize and elect officers from its membership. Officers to be elected are a Chairperson and a Secretary. A Recording Secretary and Sergeant-At-Arms (non-members of the Tribal Legislature) shall be

nominated by the Chairperson, and placed in office by and with the advice and consent of the Tribal Legislature.

Section 2. The Chairperson shall preside over all meetings of the Tribal Legislature.

Section 3. The Secretary of the Tribal Legislature shall maintain all records and enactments of the Tribal Legislature. They shall be kept on file in the Chickasaw Nation Headquarters, Ada, Oklahoma and available for inspection by Chickasaw citizens during normal office hours. All such records and enactments of the Tribal Legislature shall be the property of the Chickasaw Nation.

Section 4. The Tribal Legislature shall enact rules and regulations pertaining to the Chickasaw Nation.

Section 5. The Tribal Legislature shall prescribe procedures and regulations for voter registration.

Section 6. The Tribal Legislature shall prescribe election procedures and regulations for tribal elections.

Section 7. The Tribal Legislature shall make decisions pertaining to the acquisition, leasing, disposition, and management of real property, subject to Federal Law.

Section 8. The Tribal Legislature shall sit as a court in all cases of impeachment; its decision shall be final.

Section 9. The Governor shall prepare an Annual Tribal Budget and present it to the Legislature for approval. Approval shall require a majority vote of the Legislature. Rejection, amendment or alteration shall be considered by legislative act subject to executive veto.

Such veto shall be overridden only by an affirmative vote of at least nine (9) members of the Legislature.

Section 10. For all business of the Legislature, a quorum is required. A quorum consists of nine (9) members of the Legislature.

Section 11. The Tribal Legislature shall have the power to fix and prescribe salaries and allowances for all elected or appointed officials and employees of the Nation. The salary and allowances for elected and appointed officials shall not be increased or diminished during terms of office for which they have been elected. The Tribal Legislature will set a pay scale for all tribal employees.

Section 12. The Tribal Legislature shall adopt rules of procedure for operation of the Tribal Legislature within ninety (90) days after the initial installation of legislators.

ARTICLE VIII
SESSIONS OF THE TRIBAL LEGISLATURE

Section 1. Regular sessions of the Tribal Legislature shall be held on the third Friday of each month at 9:00 a.m. at the Chickasaw Nation Headquarters, Ada, Oklahoma, unless and until otherwise provided by the Tribal Legislature.

Section 2. Nine (9) members must be present to constitute a quorum.

Section 3. The Governor may call a special session of the Legislature at any time he deems necessary by notifying each member, by the most expedient way, at least twenty-four (24) hours in advance of the meeting

and shall call a special session upon receipt of a letter signed by at least nine (9) members of the Tribal Legislature.

Section 4. All regular and special sessions shall be open to the citizens of the Nation.

Section 5. Roll call votes shall be recorded, showing how each member of the Tribal Legislature voted.

Section 6. Robert's Rules of Order shall be followed in conducting Tribal Legislature business unless in conflict with this Constitution.

ARTICLE IX
ORDER OF BUSINESS

The order of business at any regular or special session of the Tribal Legislature shall be as follows; provided, this order of business may be suspended by the Tribal Legislature for any meeting:

1. Call to Order
2. Roll Call
3. Reading of minutes of last session
4. Unfinished business
5. Reports of Committees
6. New business (comments from citizens)
7. Adjournment

ARTICLE X
EXECUTIVE DEPARTMENT

Section 1. The Supreme Executive power of this Nation shall be vested in a Chief Magistrate, who shall be styled "The Governor of the Chickasaw Nation."

Section 2. The Lieutenant Governor shall assist the Governor and perform all duties as assigned to him by the Governor.

Section 3. The Governor and the Lieutenant Governor shall run as a team and shall be elected for a term of four (4) years and shall serve until their successors have been elected and installed.

Section 4. Any citizen of the Chicksaw Nation who is at leasty thirty (30) years of age and who possesses no less than one-quarter (1/4) of Chickasaw Indian Blood may be eligible to become a candidate for the office of Governor or Lieutenant Governor.

Section 5. The Governor and the Lieutenant Governor must be registered to vote and must have been residents of the Chickasaw Nation for at least one (1) year immediately preceding any election for which they are candidates and must remain residents of the Chickasaw Nation during the tenure of their office.

Section 6. No person who has been convicted of a felony by a court of competent jurisdiction shall be considered eligible for either of the executive offices.

ARTICLE XI
PRIVILEGES, DUTIES AND POWER OF EXECUTIVE DEPARTMENT

Section 1. The Governor shall perform all duties appertaining to the office of Chief Executive. He shall sign official papers on behalf of the Nation.

Section 2. The Governor shall have power to establish and appoint committees, members, and delegates to represent the Chickasaw Nation, by and with the advice and consent of the Tribal Legislature.

Section 3. The Governor shall have power to veto any decision of the Tribal Legislature and it must be done within five (5) working days after passage and written presentation; provided, the Tribal Legislature may override the Governor's veto in accordance with Article VII, Section 9.

Section 4. The Governor shall prepare and submit an annual tribal budget to the Tribal Legislature.

Section 5. The Lieutenant Governor shall serve in the absence of the Governor and when serving shall have all the privileges, duties and powers of the Governor.

ARTICLE XII
JUDICIAL DEPARTMENT

Section 1. The Judicial authority of the Chickasaw Nation shall consist of a three (3) member court elected by popular vote by qualified voters of the Chickasaw Nation.

Section 2. Members of the Judicial Department must be qualified electors, citizens of the Chickasaw

Nation and residents of the Chickasaw Nation during tenure of their office.

Section 3. Tribal Judges shall be elected for terms of three (3) years and shall serve until their successors are duly elected and installed. In the initial election, judges shall serve terms of one (1), two (2) and three (3) years to be determined by lot in order to establish staggered terms.

Section 4. On an annual basis, the three (3) judges shall select the presiding judge from among their number.

Section 5. No person who has been convicted of a felony by a court of competent jurisdiction shall be eligible for judicial office.

ARTICLE XIII
PRIVILEGES, DUTIES AND POWERS OF THE JUDICIAL DEPARTMENT

Section 1. The judicial Department shall have jurisdiction to decide disputes by vote of two (2) members, arising under any provision of this Constitution or any legislation enacted by the Tribal Legislature and such other jurisdiction as may be conferred upon it by the Tribal Legislature.

Section 2. Rules of procedure for the Judicial Department shall be prescribed by the Judicial Department within sixty (60) days of its members taking office and shall insure that the citizen receives due process of law and a prompt and speedy trial. Those procedures shall be presented to the Legislature which must act on those procedures within sixty (60) days after such presentation, otherwise, those procedures will become effective.

Section 3. The decisions of the Judicial Department shall be final.

Section 4. The Tribal Judicial Department shall have jurisdiction to hear claims regarding malapportionment. If a reapportionment plan is not adopted at least ninety (90) days before the election, then the Judicial Department shall have jurisdiction to prepare a reapportionment plan for submission to the Legislature.

ARTICLE XIV
INITIATIVE PETITION

Section 1. Upon submission to the Judicial Department of a valid petition, outlining the proposed measure, and signed by at least twenty percent (20%) of the registered voters of the Chickasaw Nation, it shall be the duty of the Tribal Legislature, within sixty (60) days, to submit the proposition to a vote of the electorate; provided, that if a petition is presented within one hundred eighty (180) days of the next regular election, the proposition shall be presented to the voters at that time.

Section 2. The election shall be conducted pursuant to rules and procedures prescribed by the Tribal Legislature.

Section 3. Passages of the proposition shall require a majority of votes cast; provided, at least thirty percent (30%) of the registered voters cast ballots.

ARTICLE XV
FILLING VACANCIES

Section 1. In case of death, resignation, impeachment, or recall of the Governor, the Lieutenant Governor shall immediately become Governor for the remainder of

the unexpired term. The Chairperson of the Trial Legislature shall immediately succeed to the office of Lieutenant Governor for the unexpired term. The Tribal Legislature shall elect a member of the Legislature to serve the unexpired term of the Chairperson.

Section 2. In the event of vacancies occuring in the Tribal Judicial Department or Tribal Legislature, a special election shall be held within sixty (60) days of the vacancy, or reasonably delayed until the next regularly scheduled election for that position. The vacancy shall be filled by popular vote.

ARTICLE XVI
IMPEACHMENT AND RECALL OF OFFICIALS

Section 1. Impeachment

(a) Any elected official shall be subject to impeachment for willful neglect of duty, corruption in office, habitual drunkenness, incompetency, becoming incapable of performing his duties or any offense involving moral turpitude while in office.

(b) Upon submission to the Judicial Department of a valid petition, stating the cause of action, and signed by not less than twenty-five percent (25%) of the registered voters residing within the district or area from which the official was elected, it will be the duty of the Judicial Department to determine the validity of the charges and file formal impeachment charges.

(c) The official against whom charges may be preferred, shall be entitled to a hearing by the Tribal Legislature under rules and procedures prescribed by the Tribal Legislature.

(d) The official against whom articles of impeachment are preferred, shall be suspended from the exercise of duties of his office during the pendency of his impeachment proceedings.

(e) The Tribal Legislature shall appoint a prosecutor to present the charges before the Tribal Legislature. Such prosecutor shall be a citizen of the Nation and shall not be employed or hold office in the Nation.

(f) The Tribal Legislature shall sit as a court in all cases of impeachment and its decision shall be final.

(g) The Tribal Legislature shall prescribe rules and procedures that are necessary to carry into effect the provisions of this Article.

(h) The ten (10) votes shall be required to impeach the official.

Section 2. Recall

(a) Upon submission to the Judicial Department of a valid petition, stating the cause for action, and signed by not less than twenty-five percent (25%) of the registered voters residing within the district or area from which the official was elected, it shall be the duty of the Tribal Legislature to call and conduct, within sixty (60) days, a recall election.

(b) The election shall be conducted pursuant to rules and procedures prescribed by the Tribal Legislature.

(c) Recall from office shall require a majority of votes; provided, thirty percent (30%) or more of the registered voters cast ballots.

(d) Only one (1) official shall be subject to recall at any given recall election.

(e) Any official shall be subject to the recall provision only one (1) time during his term of office.

ARTICLE XVII
OATH OF OFFICE

All elected or appointed officials shall take the following oath:

I,___, do solemnly swear (or affirm) that I will support, obey and defend the Constitutions of the Chickasaw Nation, and the United States of America and will discharge the duties of my office with fidelity, so help me God.

ARTICLE XVIII
AMENDMENT

Section 1. Proposed amendments to this Constitution may be initiated by either of the following methods:

(a) A resolution of the Tribal Legislature adopted by at least nine (9) affirmative votes.

(b) A valid petition submitted to the Tribal Legislature signed by not less than twenty percent (20%) of the registered voters of the Chickasaw Nation.

Section 2. Amendments proposed by either (a) or (b) in the above section shall be submitted to a vote of the electorate in an election called for that purpose by the Governor and conducted pursuant to rules and procedures prescribed by the Tribal Legislature.

Section 3. Any amendment adopted by a majority of the votes cast in the election shall be submitted to the Secretary of the Interior, or his authorized representative, for approval action. If no action is taken within thirty (30) days following its receipt by the Secretary's authorized representative, the amendment shall be deemed approved and it shall thereafter be effective.

ARTICLE XIX
EFFECTIVE DATE OF CONSTITUTION

This Constitution shall become effective when approved by the Secretary of the Interior and ratified by the Chickasaw people.

ARTICLE XX
APPROVAL

I, John W. Fritz, Deputy Assistant Secretary – Indian Affairs (Operations) by virtue of the authority delegated to me by 209 D.M. 8.3, do hereby approve this Constitution of the Chickasaw Nation of Oklahoma. It shall become effective upon ratification; provided, that nothing in this approval shall be construed as authorizing any action under this document that would be contrary to Federal Law.

John W. Fritz
Deputy Assistant Secretary –
Indian Affairs (Operations)

Washington, D.C.
Date: July 15, 1983

ARTICLE XXI
CERTIFICATE OF RATIFICATION

Pursuant to the June 17, 1981, order of the U.S. District Court for the District of Columbia, as amended

January 6, 1983, in Cravatt v. Watt, Civil No. 77-1664, the Deputy Assistant Secretary – Indian Affairs (Operations), on July 15, 1983, approved this Constitution and authorized the calling of an election for its ratification to be conducted on August 27, 1983. On August 27, 1983, the qualified voters of the Chickasaw Nation duly ratified/rejected this Constitution by a vote of___for, and___against. The results are hereby certified by members of the Chickasaw Election Commission shown below:

Fred L. Ragsdale, Jr., Arbitrator/Administrator

Charles Guy Tate, Representative for Plaintiffs

Sally Bell, Representative for Plaintiffs

Clarence Lee Cravatt, Representative for Plaintiffs

Pat Woods, Representative for Tribal Defendant

Ted Key, Representative for Tribal Defendant

Kenneth Meeler, Representative for Tribal Defendant

Ardmore, Oklahoma

Date: August 27, 1983

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA

THE CHICKASAW NATION, JAN GRAHAM, DONNA BELLEFUELLE, NORMA WILLIAMS, STEPHANIE DAY, JEAN MANN, and HOWARD HILL, Plaintiffs, v. THE STATE OF OKLAHOMA, ex rel. FRED COLLINS, District Attorney for Murray County, Oklahoma, RON THOMAS, MIKE GRIFFIS, KEITH WOODELL, MARVIN PIERCE, MIKE MORROW, MICKEY WEBB, JIM LANCE, HARRIS PENNER, B.J. FIELDS, DAVE PITTMAN, RAY GOODWIN, and; CITY OF SULPHUR, OKLAHOMA, Defendants.	No. 86-32-C

ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

(Filed Sept. 30, 1986)

The court has before it plaintiffs' motion for summary judgment in this action for declaratory and injunctive relief against the State of Oklahoma *ex rel.* the District Attorney for Murray County and various city officials of the City of Sulphur, Oklahoma. Plaintiffs Chickasaw Nation (hereafter Tribe) and six employees who operate the Tribe's bingo enterprise request this court enter an order declaring that the State's and City of Sulphur's jurisdiction (both civil and criminal) does not extend to cover the Tribe's bingo enterprise. Plaintiffs further seek injunctive relief prohibiting the defendants

from in any way regulating or interfering with their bingo enterprise.

The court by order dated February 4, 1986, denied plaintiffs' application for a preliminary injunction. By agreement, the parties have now submitted this action for a determination on plaintiffs' motion for summary judgment. The parties submitted various affidavits, court decisions, briefs, and the transcript from the hearing on plaintiffs' application for a preliminary injunction held January 28, 1986. Having carefully reviewed all materials, the court enters this order granting plaintiffs' motion for summary judgment and orders that a permanent injunction be issued forthwith.

STATEMENT OF UNDISPUTED FACTS

1. The Tribe is a federally recognized Indian tribe governed by its tribal constitution with the approval of the Secretary of Interior.

2. In October 1984, the Tribe through its Tribal Legislature enacted the Chickasaw Gaming Act of 1984, Chickasaw Nation Enactment No. 85-1, which establishes and regulates the operation of bingo games on land owned by the Tribe.[1]

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[1] Overton James, Governor of the Chickasaw Nation, and Joe Parker, Acting Area Director, Muskogee Office, Bureau of Indian Affairs, provided the bulk of the information contained within this statement of undisputed facts during the hearing on plaintiffs' application for a preliminary injunction held on January 28, 1986.

3. The Tribe has engaged in bingo at the Chickasaw Motor Inn, Sulphur, Oklahoma, in order to foster economic self-sufficiency and to ease the burden resulting from reductions in federal expenditures for tribal programs. The bingo operation is owned and operated by the Tribe.

4. The income generated from the Tribe's bingo operations is used to provide and supplement health and welfare services for tribal members.

5. On January 25, 1986, the Tribe and its employees (the individual plaintiffs herein) were conducting bingo games at the Chickasaw Motor Inn, Sulphur, Oklahoma.

6. The Chickasaw Motor Inn is located on land previously part of the Chickasaw allotment and thereafter reacquired from the Economic Development Administration in 1972 by the Tribe with tribal trust monies. The property is more particularly described as follows:

> All of Lots Eleven (11), Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15), Twenty-Nine (29), Thirty (30), Thirty-One (31), Thirty-Two (32), Thirty-Three (33), Thirty-Four (34), Thirty-Five (35), Thirty-Six (36), Thirty-Seven (37), Thirty-eight (38), in Block One Hundred Fifty-Six (156), in the City of Sulphur, Oklahoma, according to the Re-Subdivision thereof, Murray County, Oklahoma.

7. In August 1985, the Tribe conveyed the subject property to the United States of America in trust for the Tribe.

8. The federal government has supervision and control over the Tribe's activities on the land.

9. The Tribe's bingo operations are not licensed by the State of Oklahoma.

10. On January 25, 1986, the defendants entered the Chickasaw Motor Inn; specifically, the bingo room, and confiscated bingo equipment and monies and arrested the individual plaintiffs who were conducting the game.

11. The Tribe estimates an annual net income derived solely from the operation of bingo to be $75,000.00 to $80,000.00.[2]

CONCLUSIONS OF LAW

1. This court has jurisdiction over this matter pursuant to 28 U.S.C. §1331 and 1362. Venue is proper in this court pursuant to 28 U.S.C. §1391(b).

2. Under 18 U.S.C. §1151(a) Indian Country is defined as "all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation . . . ."

3. Any ambiguities in the construction of statutes should be resolved in favor of the Indians. *Alaska Pac. Fisheries v. United States*, 248 U.S. 78, 89 (1918). The determination of Indian Country land does not depend upon

[2] The affidavit of John Clark Caldwell, III, President of Enterprise Management Consultants, Inc. which has managed Pottawatomie bingo at Shawnee, Oklahoma, estimates gross *revenue* generated from the Tribe's bingo operations to be between $260,000.00 and $300,000.00 per year. Additionally, the affidavit of plaintiff Jan Graham, Manager of the Chickasaw Motor Inn, estimates the Tribe's motel and restaurant operations at the inn will lose $263,000.00 per year if bingo is prohibited at the Chickasaw Motor Inn.

the label used in designating them. *United States v. McGowan*, 302 U.S. 535 (1938). Rather, the test to be applied for a determination of Indian Country is whether the land "has been validly set apart for the use of the Indians as such, under the superintendence of the Government." *United States v. John*, 437 U.S. 634, 649, *quoting United States v. Pelican*, 232 U.S. 442, 449 (1914).

4. The Chickasaw Motor Inn is located on tribal trust land appropriated and set apart for the use and support of the Tribe under the superintendence of the United States Government and is therefore Indian Country as defined in 18 U.S.C. §1151(a). *See, John* at 649, *Pelican* at 449; *Cheyenne-Arapaho Tribes v. State of Okl.*, 618 F.2d 665, 667-669 (10th Cir. 1980).

5. Absent the consent of Congress, states have no authority over Indians in Indian Country. *See, Williams v. Lee*, 358 U.S. 217, 220 (1959); *Fisher v. District Court*, 424 U.S. 382 (1976); *John* at 651.

6. In 1953, express Congressional consent was given through the enactment of Pub.L. 83-280 (hereafter PL-280) for the states to assume criminal and/or civil jurisdiction over Indians in Indian Country. Pub.L. 83-280, 67 Stat. 588, re-enacted in Indian Civil Rights Act of 1968, 82 Stat. 77 (codified as amended at 25 U.S.C. §§1301-1303).

7. The State of Oklahoma has not met the requirements of PL-280 for assumption of criminal and/or civil jurisdiction over Indians in Indian Country. *State of Oklahoma ex rel. Thomas May v. Seneca-Cayuga Tribe of Oklahoma*, 711 P.2d 77 (Okla. 1985); *Confederated Bands & Tribes of Yakima Indian Nation v. Washington*, 550 F.2d 443, 445 N.3 (9th Cir. 1977).

8. Absent Congressional consent and a concomitant assumption of jurisdiction by the State, Indian Country state jurisdiction is preempted both by federal protection of tribal self-government and by rights granted or preserved by federal law. *McClanahan v. Arizona State Tax Comm'n*, 411 U.S. 164, 172 (1973); *Cabazon Band of Mission Indians v. County of Riverside*, 783 F.2d 900 (9th Cir. 1986). A "particularized inquiry into the nature of the state, federal, and tribal interests at stake," *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 145 (1980), is necessary for a determination as to proper state jurisdiction in Indian Country.

9. Current federal tribal policy advocates tribal self-determination, self-sufficiency, and economic development. *Statement by the President*: Indian Policy, The White House. 19 Weekly Comp. Pres. Doc. 98, 99 (Jan. 24, 1983); *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324 (1983). Indian tribal bingo games have been recognized as one way to support this current federal policy. *Cabazon*, at 904-905.

10. The state's significant interests in imposing their regulatory scheme to negate the siphoning of revenues and preventing the infiltration of organized crime are not supported by persuasive evidence which would make the state's interests rise to a level sufficient to overcome and outweigh the strong and compelling interests of the Tribe and federal government which are present in this case.

11. The court finds that the interests of the Tribe in fostering economic self-sufficiency, easing the burden resulting from reductions in federal expenditures for tribal programs, and exercising its sovereignty outweigh

the interests of the state. Furthermore, the court finds that the mutual interests of the Tribe and federal government in providing the climate compatible with tribal economic self-sufficiency outweigh the state's interests.

12. The court finds that after viewing the record in the light most favorable to the defendants, there exists no genuine issue as to a material fact and plaintiffs are entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).

It is therefore ordered that plaintiffs' motion for summary judgment be granted.

It is further ordered that a permanent injunction shall be issued.

It is further ordered that defendants return all confiscated monies and equipment taken from plaintiffs on January 25, 1986.

IT IS ALL SO ORDERED this 30 day of September, 1986.

/s/ Frank H. Seay
Frank H. Seay
United States District Judge

IN THE UNITED STATES DISTRICT COURT TO THE EASTERN DISTRICT OF OKLAHOMA

THE CHICKASAW NATION, JAN GRAHAM, DONNA BELLEFUELLE, NORMA WILLIAMS, STEPHANIE DAY, JEAN MANN, and HOWARD HILL,
Plaintiffs,

v.

THE STATE OF OKLAHOMA, ex rel. FRED COLLINS, District Attorney for Murray County, Oklahoma, RON THOMAS, MIKE GRIFFIS, KEITH WOODELL, MARVIN PIERCE, MIKE MORROW, MICKEY WEBB, JIM LANCE, HARRIS PENNER, B.J. FIELDS, DAVE PITTMAN, RAY GOODWIN, and CITY OF SULPHUR, OKLAHOMA,
Defendants.

No. 86-32-C

PERMANENT INJUNCTION

(Filed Sept. 30, 1986)

TO: FRED COLLINS, DISTRICT ATTORNEY FOR MURRAY COUNTY, OKLAHOMA, AND EACH ASSISTANT DISTRICT ATTORNEY, AGENT, EMPLOYEE, SERVANT, OR OTHER REPRESENTATIVE OF THE DISTRICT ATTORNEY FOR MURRAY COUNTY AND ALL PERSONS ACTING IN ACTIVE CONCERT WITH YOU OR UNDER YOUR CONTROL.

TO: THE CITY OF SULPHUR, OKLAHOMA, RON THOMAS, MIKE GRIFFIS, KEITH WOODELL, MARVIN PIERCE, MIKE MORROW, MICKEY WEBB, JIM LANCE, HARRIS PENNER, B. J. FIELDS, DAVE PITTMAN, RAY GOODWIN, AND ANY AGENT, EMPLOYEE, SERVANT, OR OTHER REPRESENTATIVE OF THE CITY

OF SULPHUR AND ALL PERSONS ACTING IN ACTIVE CONCERT WITH THE CITY OF SULPHUR OR UNDER ITS CONTROL.

On this 30 day of September, 1986, pursuant to the order of this court granting plaintiffs' motion for summary judgment, IT IS ORDERED that Fred Collins, District Attorney for Murray County, Oklahoma, and each Assistant District Attorney, agent, employee, servant, attorney or other representative of the district attorney for Murray County, and all persons acting in active concert with him or under his control be; and the City of Sulphur, Ron Thomas, Mike Griffis, Keith Woodell, Marvin Pierce, Mike Morrow, Mickey Webb, Jim Lance, Harris Penner, B. J. Fields, Dave Pittman, Ray Goodwin, and any agent, employee, servant, or other representative of the City of Sulphur and all persons acting in active concert with the City of Sulphur or under its control be; and hereby are, permanently enjoined from the following:

1. Seeking or procuring the civil or criminal prosecution of any person or entity managing, working for, or participating in the activities of the Chickasaw Nation tribal bingo enterprise on the property located in Sulphur, Oklahoma, and more particularly described as follows:

> All of Lots Eleven (11), Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15), Twenty-Nine (29), Thirty (30), Thirty-One (31), Thirty-Two (32), Thirty-Three (33), Thirty-Four (34), Thirty-Five (35), Thirty-Six (36), Thirty-Seven (37), Thirty-eight (38), in Block One Hundred Fifty-Six (156), in the City of Sulphur, Oklahoma, according to the Re-Subdivision thereof, Murray County, Oklahoma;

2. Confiscating, removing, seizing, or otherwise interfering with the property and receipts of the tribal bingo enterprise;

3. Interfering in any way with the peaceable operation of the tribal bingo enterprise.

/s/ Frank H. Seay
Frank H. Seay
United States District Judge

APPENDIX C

CHICKASAW NATION
ENACTMENT NO. 85-1

GAMING ACT

BE IT ENACTED by the Tribal Legislature of the Chickasaw Nation:

Section 1. Short Title.

This Act shall be cited as the "Chickasaw Gaming Act of 1984."

Section 2. Purpose.

The purpose of the gaming act is to make lawful and to regulate the conducting of certain games of chance by the authority of the Chickasaw Nation.

Section 3. Definitions.

As used in the gaming act:

A. **"Gaming"** shall mean the engaging of persons in a contest or activity for the purpose of amusement or gain.

B. **"Proceeds"** shall mean receipts from the sale of shares, tickets, or rights in any manner connected with participation in a game of chance or the right to participate therein, including any admission fee or charge, the sale of equipment or supplies, and all other miscellaneous receipts.

C. **"Chickasaw Nation"** shall mean the tribe of Indians located within the boundaries set forth in the Constitution of the Chickasaw Nation, adopted August 27, 1983, being duly recognized by the Secretary of Interior of the United States of America and other agencies of the United States of America and other governments, as a self-governing, independent, sovereign government; sometimes hereinafter called "Tribe."

D. **"Tribal Legislature"** shall mean the Tribal Legislature of the Chickasaw Nation, which is the recognized

governing body of the Tribe, possessing plenary power over the people, land and property within the exterior boundaries of the Tribe.

E. **"Player"** shall mean any person, Indian or non-Indian and whether a Chickasaw Indian or not, paying some amount of United States currency to the Tribe or its agent, servant or employee for admission to and participation in gaming and who has a reasonable expectation of receiving a prize.

F. **"Prizes"** shall mean and refer to any United States currency, cash, or other property or thing of value awarded to a player of gaming, or players in a series of games.

G. **"Occasion"** shall mean a single gathering or session at which a series of successive games is played.

H. **"Person"** shall mean a natural person, either Indian or non-Indian, and either Chickasaw member or non-chickasaw member.

I. **"Premises"** shall mean the room, hall, enclosure or outdoor area used for the purpose of gaming.

Section 4. Operations

It shall be lawful for the Chickasaw Nation, its agents, servants and employees to perform, conduct, operate, maintain or supervise gaming or series of gaming events at any premises, on land owned by the Chickasaw Nation. It shall be unlawful for any other person, corporation, company, firm or other entity, except the Chickasaw Nation, to perform, conduct, operate, maintain or supervise gaming or series of gaming events on land owned by the Chickasaw Nation.

Gaming may be conducted each and every day of the week and at any hour of the day, except not later than 2:00 a.m. and not beginning a new occasion earlier than the next 10:00 a.m. following.

There shall be no limit as to the prize money or prizes for any single game or occasion.

All persons involved in the conduct of gaming must be bonafide employees of the Chickasaw Nation or bonafide employees of its agents, servants or employees.

No person of under the age of 21 years shall be allowed to participate in gaming.

Section 5. Name Tags.

All persons operating or assisting in the operation or conduct of any gaming shall wear legible tags evidencing their names and the legend and symbol of the Chickasaw nation. Tags must be visible and worn by or otherwise affixed to all persons operating or assisting in the operation of gaming.

Section 6. Proceeds.

All of the proceeds derived from gaming, after payment of the prize money, expenses and fees, shall be collected by the Chickasaw Nation and deposited into the tribal treasury. The use of such proceeds shall be subject to the regular budgeting process.

NOW, THEREFORE, BE IT ENACTED that the Chickasaw Gaming Act of 1984 is hereby approved by the Tribal Legislature of the Chickasaw Nation.

CERTIFICATION

The foregoing was adopted by the Chickasaw Nation Tribal Legislature by a vote of 11 ayes, 0 nays and 2 abstained with a quorum being present at a meeting held on the 19th day of October 1984.

_____
Robert Stephens, Chairman
Chickasaw Tribal Legislature

_____
Overton Cheadle, Secretary
Chickasaw Tribal Legislature

Concur: _____
Overton James, Governor
Chickasaw Nation

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SENECA-CAYUGA TRIBE OF OKLAHOMA, Plaintiff, v. STATE OF OKLAHOMA, By and Through THOMAS H. MAY, District Attorney of Ottawa County, Oklahoma, BOB SILLS, Sheriff of Ottawa County, Oklahoma, JUDGE JON D. DOUTHITT, Judge of the District Court of Ottawa County, Oklahoma, Defendants.	)	No. 85-C-639-B (Consolidated with 86-C-393-B)
QUAPAW TRIBE OF OKLAHOMA, et al., Plaintiffs, v. STATE OF OKLAHOMA, et al., Defendants.	)	

OPINION AND FINDINGS OF FACT AND CONCLUSIONS OF LAW
(Filed Jun 5, 1986)

I. INTRODUCTION

In March of 1983, the State of Oklahoma filed suit in the District Court for Ottawa County, Oklahoma, seeking to enjoin the Quapaw and Seneca-Cayuga Indian tribes from conducting on tribal lands bingo operations which

were not licensed by the state and which otherwise violated the Oklahoma gaming laws. The Indian bingo games violated State laws by operating on Sundays, operating more frequently than allowed and by offering cash jackpots exceeding the statutory limit. 21 Okl.St.Ann. §995.1 *et seq*. Shortly after the State filed suit, the Seneca-Cayuga Tribe filed a Complaint before this Court and a temporary restraining order was entered restraining state officials from enforcing the gaming laws on Indian land. *Seneca-Cayuga Tribe of Oklahoma v. Ingram*, No. 83-C-236-C (N.D.Okla. filed March 10, 1983). A preliminary injunction was issued on March 17, 1983, by another judge of this court.

On March 18, 1983, Ottawa County District Judge Jon D. Douthitt dismissed the state court lawsuit, holding that Oklahoma had not taken the steps required to assert jurisdiction over the Indian lands in question, therefore, the state court lacked subject matter jurisdiction. After the state court action was dismissed, the Seneca-Cayuga Tribe voluntarily dismissed its federal court action on March 28, 1983.

The state appealed Judge Douthitt's ruling to the Supreme Court of Oklahoma, and on July 2, 1985, the Oklahoma Supreme Court reversed the lower court, holding the state might have jurisdiction and remanded the matter to the state court for an evidentiary hearing to determine whether state regulation of the bingo games on Indian land was proper. *State of Oklahoma ex rel. Thomas*

May v. Seneca-Cayuga Tribe of Oklahoma, 711 P.2d 77 (Okl. 1985)[1] (hereafter, "Seneca-Cayuga").

The Oklahoma Supreme Court made four findings. First, the court found that the Quapaw and Seneca lands in question are "Indian Country" as defined by 18 U.S.C. §1151(c). Second, that Public Law 83-280, enacted by Congress in 1953 to allow states to assume civil and criminal jurisdiction over Indian County, does not bar Oklahoma from asserting jurisdiction in Indian Country, even though the state has never taken steps to comply with the requirements of PL-280. Third, that Oklahoma is not barred from enforcing its bingo laws in Indian Country by the doctrine of tribal sovereign immunity, because, in the court's view, that doctrine has been displaced by principles of federal pre-emption and infringement on tribal self-government. The court found Congress had not pre-empted the states from acting in this area and that tribal self-government was not infringed because bingo is not a " traditional tribal activity." *Seneca-Cayuga, supra* at 90. Therefore, said the court, the state has "residuary jurisdiction" over bingo in Indian Country emanating from the inherent police powers of the state. *Seneca-Cayuga* at 88, n. 60. Finally, the Court determined that the issue of whether the State could assert jurisdiction over the Indian bingo operations was a mixed question of fact and law. The matter was remanded to the Ottawa County District Court with directions that that court hold an

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[1] The state brought separate appeals of the trial court's rulings concerning the Quapaws and Senecas. The appeals were consolidated for disposition by the Oklahoma Supreme Court.

evidentiary hearing to determine if jurisdiction were proper under the circumstances presented in these cases.

Before the state court could conduct the evidentiary hearing, the Senecas filed suit in this court to enjoin Ottawa County officials from enforcing the gaming laws against them and to enjoin Judge Douthitt from proceeding with the mandated hearing. On April 22, 1986, the Quapaw Tribe filed suit in this court seeking to enjoin the same parties from interfering with the bingo operations on the Quapaw land. On May 7, 1986, this court consolidated the Seneca and Quapaw cases for purposes of a hearing on plaintiffs' Application for Preliminary Injunction and for trial. Following hearings on May 5 and 6, the court enjoined Judge Douthitt from taking any further action in these matters until further notice of this court, and enjoining the Ottawa County District Attorney and Sheriff, from seeking to enforce the state gaming laws against the bingo operations on Seneca and Quapaw lands. The Court's Order provided that a formal Order containing the Court's Findings and Conclusions supporting its decision to enter a preliminary injunction would follow. This Order contains those Findings and Conclusions.

The Court is aware that federal courts are reluctant to enjoin pending state court proceedings. *Younger v. Harris*, 401 U.S. 37 (1971). When a federal court is asked to enjoin state proceedings, the normal course is to reject that request. Id. at 45. The principle of comity which underlies respect for state court proceedings precludes any presumption that state courts will not adequately safeguard

federal constitutional rights. *Middlesex Co. Ethics Committee v. Garden State Bar As. ...* 457 U.S. 423 (1982). Proceedings in state court should normally be allowed to continue unimpaired by intervention of lower federal courts, with relief from error, if any, through the state appellate courts and, ultimately, the United States Supreme Court. *Ferrer Delgado v. Syliva de Jesus*, 440 F.Supp. 979 (D.Puerto Rico 1976).

Under *Younger* and earlier cases [*see, Fenner v. Boykin*, 271 U.S. 240 (1926); *Spielman Motor Sales Co. v. Dodge*, 295 U.S. 89 (1935); *Beal v. Missouri Pac. R. Co.*, 312 U.S. 45 (1941); *Watson v. Buck*, 313 U.S. 387 (1941); *Williams v. Miller*, 317 U.S. 599 (1942); *Douglas v. City of Jeannette*, 319 U.S. 157 (1943)], the normal course of action for a federal court asked to enjoin pending state criminal proceedings is to deny the request. However, under certain narrowly defined circumstances, injunctive relief is appropriate. *Dombrowski v. Pfister*, 380 U.S. 479 (1965); *Younger, supra.* Although *Younger* did not specify these circumstances in detail, it made it clear that an injunction would be appropriate in certain "extraordinary circumstances." *Younger* at 53-54. A key to determining when an injunction should issue is the likelihood that without an injunction, movant will suffer irreparable injury. However, the threat of injury must be "great and immediate." *Huffman v. Pursue, Ltd.*, 420 U.S. 592 (1975); *Massachussetts State Grange v. Benton*, 272 U.S. 525, 527 (1926). Under the extraordinary circumstances presented in this case, the Court finds that an injunction is appropriate.

Normally, a defendant facing state court proceedings would have the protection of appeal through the state

appellate system. However, in this case the highest appellate court in the state has already ruled adversely to the movants. By determining that the state of Oklahoma is not precluded from enforcing its gaming laws in Indian Country, the Oklahoma Supreme Court has resolved the ultimate issue herein against the Indian tribes. Although the Ottawa County District Court could determine, after an evidentiary hearing, that the state cannot enforce its gaming laws under the facts of this case, the fundamental contention of the Indian tribe – that the state lacks jurisdiction over Indian bingo games operated in Indian Country – has been rejected by the Oklahoma Supreme Court. For this reason, since the fundamental question in this matter has already been ruled on by the state's highest court, it is appropriate for this court to enter an injunction enjoining the state court proceedings if the criteria of F.R.Civ.P. 65 are met. The basic issues before the court on Plaintiff's Application for Preliminary Injunction are these: 1) the substantial likelihood that movant will eventually prevail on the merits; 2) a showing that the movant will suffer irreparable injury unless the injunction issues; 3) proof that the threatened injury to movant outweighs whatever damage the proposed injunction may cause the opposing party; and 4) a showing that the injunction, if issued, will not be adverse to the public interest. *Lundgrin v. Claytor*, 619 F.2d 61, 63 (10th Cir. 1980); Wright & Miller, Federal Practice and Procedure: Civil §2948 (1973). Because this court concludes the decision of the Oklahoma Supreme Court is contrary to federal law and because the criteria for an injunction under Rule 65 and *Lundgrin* have been met, this court has enjoined the state from proceeding with

enforcement of the state gaming laws against the Quapaws and Senecas and has enjoined the Ottawa County, Oklahoma, District Court from proceeding in this matter until further notice from this court.

This nation's legal relationship with its Indian tribes has evolved over its history. Initially, Indian tribes were held to be wholly distinct nations, free from the jurisdiction of the states within which they lived. *Worcester v. Georgia*, 6 Pet. 515 (1832). In the latter part of the 19th century, a move began to assimilate the Indians into America. In 1934, this policy of assimilation was reversed and a policy of Indian sovereignty and self-determination began to emerge. *See, United States v. United States Fidelity & Guaranty Co.*, 309 U.S. 506 (1940). In 1953, however, by Congressional enactment, the states were given authority to assume jurisdiction over Indian tribes in certain civil and criminal matters. Pub. L. 83-280, 67 Stat. 588, reenacted in Indian Civil Rights Act of 1968, 82 Stat. 77 (codified as amended at 25 U.S.C. §§1301-1303) (hereinafter, PL-280). *See, Kake Village v. Egan*, 369 U.S. 60, 71-75 (1962). While a policy of Indian self-governance continues, the states may assert their authority over the tribes in certain circumstances. The boundaries of this state jurisdiction are the heart of the controversy before this Court.

When Oklahoma joined the Union, its constitution had to disclaim all title to Indian lands as a prerequisite to statehood. Okla. Constitution, Art. I, §3. The Enabling Act which permitted Oklahoma to draft a constitution also contained a disclaimer to Indian land. Act of June 16, 1906, 34 Stat. 267.

In 1953, when PL-280 was enacted, Congress removed the barrier to state jurisdiction over Indian tribes posed by the disclaimer provision in the state Enabling Acts. 25 U.S.C. §1324. PL-280 granted five, and ultimately six, states jurisdiction over Indian tribes. A provision of the law permitted any other state to exercise this option. States could assume jurisdiction over criminal offenses committed by or against Indians in Indian Country to the same extent that that state has jurisdiction over offenses committed elsewhere in the state. PL-280 §§ 2(a) and 6. States could assume jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in Indian Country to the same extent that a state has jurisdiction over other civil causes of action. PL-280 §§ 4(a) and 6. In order to claim such jurisdiction, a state had to "remove any legal impediment to the assumption of civil and criminal jurisdiction. . . ." PL-280, § 6. The states were required to remove constitutional barriers to jurisdiction, "where necessary," and to assert jurisdiction by "affirmative legislative action. " PL-280, §7. When PL-280 was amended in 1968, this latter requirement was removed, but a requirement of Indian consent to jurisdiction was added. 15 U.S.C. §1322(a). Oklahoma did not claim jurisdiction as permitted under PL-280 as originally enacted and has not sought tribal consent to jurisdiction under the amended Act. *Seneca-Cayuga, supra* at 88.

Nevertheless, the Oklahoma Supreme Court holds that even though Oklahoma has not followed the procedures of PL-280 of removal of its constitutional disclaimer and has not taken other affirmative legislative action to assert jurisdiction in Indian Country, the state

may exercise "residuary jurisdiction" on Indian land. Until *Seneca-Cayuga,* the concept of "residuary jurisdiction" did not appear in Oklahoma case law. The Oklahoma Supreme Court said residuary jurisdiction "is used to invest state courts with jurisdiction interstitially when the subject-matter of cognizance does not infringe upon tribal self-government and has not been pre-empted by congressional legislation." *Seneca-Cayuga* at 88. One commentator has termed the court's reasoning "obscure and confused." C. Goldberg-Ambrose, *Public Law 280 – From Termination to Self-Determination,* Paper presented at a seminar entitled "The American Indian in Contemporary Life: An examination of Relationships Between Cultural Values and American Indian Policy," February 21-22, 1985, at the University of California at Los Angeles American Indian Studies Center.

In finding residuary jurisdiction, the court relied on *Three Affiliated Tribes v. Wold Engineering,* 467 U.S. 138 (1984), but *Wold* is inapplicable to this case for two reasons: First, *Wold* concerned a case where an Indian tribe sought to avail itself of state courts to pursue a claim against a non-Indian for activities occurring on Indian land. The Supreme Court has repeatedly approved the exercise of jurisdiction by state courts over claims by Indians against non-Indians, even when those claims arose in Indian Country. *Id.* at 148. In the instant case, however, the state, over the protests of Indian tribes, seeks to enforce its bingo laws against Indians on Indian land. "State law generally is not applicable to Indian affairs within the territory of an Indian tribe, absent the consent of Congress." F. Cohen, Handbook of Federal

Indian Law, 259 (1982). The second reason *Wold* is inapplicable to this case is that there is no basis for the residuary jurisdiction Oklahoma claims. In *Wold*, the Supreme Court held that PL-280 does not divest a state of jurisdiction lawfully obtained before that Act was passed. *Wold* concerned a North Dakota Supreme Court decision that held that a state court did not have jurisdiction over a civil lawsuit by an Indian tribe against a non-Indian for activities occurring on Indian land. In 1957, the North Dakota Supreme Court made a broad claim to state jurisdiction in Indian country. In *Vermillion v. Spotted Elk*, 85 N.W.2d 432 (N.D. 1957), the court held that the disclaimers to Indian land contained in the North Dakota Enabling Act and state Constitution foreclosed civil jurisdiction over Indian Country only in cases involving interests in Indian lands themselves. In 1963, the North Dakota Supreme Court held that a state statute enacted pursuant to PL-280 disclaimed all state jurisdiction in Indian Country absent Indian consent. *In re Whiteshield*, 124 N.W.2d 694 (N.D. 1963). In *Wold*, the U. S. Supreme Court held that PL-280 did not require North Dakota "to disclaim the basic jurisdiction recognized in *Vermillion* or authorized it to do so." *Wold* at 150. "Nothing in the language or legislative history of Pub. L. 280 indicates that it was meant to divest States of pre-existing and otherwise lawfully assumed jurisdiction." *Id*. However, while North Dakota had asserted a broad claim to jurisdiction in Indian Country, no such claim has been made by Oklahoma. While *Wold* holds that PL-280 does not divest a state of pre-existing and lawfully obtained jurisdiction, it provides no basis for a state which has made no such jurisdictional claim to accomplish by silence

what Congress intended it to do under the terms of PL-280. PL-280 permits states to assume jurisdiction over civil suits between Indians and over criminal matters where an Indian is the perpetrator or victim of the crime. PL-280 §§2(a) and 4(a). The Act expressly excludes certain forms of state jurisdiction: regulatory jurisdiction, taxing authority and jurisdiction over hunting and fishing rights. PL-280 §§2 (b) and 4 (b). The implication of PL-280 is clear: To the extent a state seeks to assert jurisdiction over civil and criminal matters on Indian land, it must do so under the Act, while any attempt to assert taxing or regulatory authority or assert jurisdiction over hunting and fishing rights is impermissible. *See*, Goldberg-Ambrose, *supra*.

Oklahoma's bingo laws may be classified as either regulatory or criminal. For example, 21 Okl.St.Ann. §995.3 specifies the manner in which one may obtain a license to conduct bingo games and §995.10 places limits on the number of bingo sessions which may be held per day and per week and also limits the size of cash prizes which may be awarded in a single game and in a single session. Section 995.15 makes violation of the bingo laws, except as otherwise provided, a misdemeanor. While the Oklahoma Supreme Court found no useful distinction between "civil regulatory" and "criminal prohibitory" bingo laws, the distinction is significant for purposes of PL-280. To the extent that Oklahoma's bingo laws are criminal statutes, failure to comply with PL-280 means the State may not have authority to enforce them in Indian Country, unless a prior valid transfer of jurisdiction occurred. *Cf., Kennerly v. District Court*, 400 U. S. 423, 425-430 (1971). Failure to assume jurisdiction under

PL-280 has been cited as an indication that the state lacks the jurisdiction it seeks to claim. Cohen, *supra*, at 367; *see, Fisher v. District Court*, 424 U. S. 382, 388 (1976); *McClanahan v. Arizona State Tax Comm'n*, 411 U.S. 164, 177-78 (1973). A number of states have held that failure to accept jurisdiction under PL-280 precludes a state from asserting that jurisdiction in Indian Country. *See*, Cohen at 367 and cases cited therein. Indeed, this has been the law in Oklahoma. *State v. Burnett*, 671 P.2d 1165 (Okl.Cr. 1983); *State v. Littlechief*, 573 P.2d 263 (Okl.Cr. 1978)(*adopting, U.S. v. Littlechief*, No. CR-76-207-D (W.D.Okl. November 7, 1977)); *C.M.G. v. State*, 594 P.2d 798, 799 (Okl.Cr.), *cert. denied*, 444 U.S. 992 (1979). Further, to the extent that Oklahoma's bingo laws are regulatory in nature, the state may be precluded by PL-280 from seeking to enforce them in Indian Country. *See, Bryan v. Itasca County*, 426 U.S. 373, 384 and 388 n. 14 (1976); *Santa Rosa Band v. Kings County*, 532 F.2d 655 (9th Cir. 1975), *cert. denied*, 429 U.S. 1038 (1977) (By defining the limits of the jurisdiction granted to the states, PL-280 "necessarily pre-empts and reserves to the Federal government or the tribe jurisdiction not so granted.") *See also*, Goldberg-Ambrose, *supra*.

The *Seneca-Cayuga* decision is misguided for other reasons, as well. The Court relied on U.S. Supreme Court cases permitting state jurisdiction over non-Indians in Indian country. [*E.g. Washington v. Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134 (1980); *Moe v. Confederated Salish and Kootenai Tribes*, 425 U. S. 463 (1976)], and extended their application to a situation where state jurisdiction is aimed at Indian conduct in Indian Country which affects non-Indians. In so doing, the court "allowed state jurisdiction to seep into the area

preempted by Public Law 280." Goldberg-Ambrose, *supra*. The focus of Oklahoma's bingo laws is the *conduct* of the games. The laws do not make participation in bingo an offense. Thus, the laws are clearly aimed at the actions of the Indian tribes in Indian Country, not the conduct of non-Indian or non-tribe members. *See, Cabazon Band of Mission Indians v. County of Riverside*, 783 F.2d 900 (9th Cir. 1986). In such a situation, the State must assume jurisdiction under PL-280, if at all.[2] *See, Kennerly, supra*, at 425-26; Cohen at 367.

Finally, even assuming that Oklahoma could, under proper circumstances, assert jurisdiction over the Indian bingo operations herein, a balancing of tribal, state and federal interests is required to determine if state jurisdiction is proper. Determination of whether the assertion of state authority is pre-empted calls for a "particularized inquiry into the nature of the state federal tribal interests at stake." *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 145 (1980). The Oklahoma Supreme Court undertook a balancing of interests in this matter, but erroneously gave little or no weight to tribal and federal interests while overvaluing ill-defined state interests. The court failed to view the tribal interests in self-determination and economic development against the backdrop of existing federal policy and interests in encouraging Indian

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[2] Perhaps the above, coupled with the Stipulation of Facts of the parties, leaves little for trial on the merits, but this remains to be seen as there may be additional facts to bring before the Court at trial.

self-sufficiency. The President's statement on Indian policy indicates that encouraging Indian economic development is a major part of that policy. *Statement by the President: Indian Policy,* The White House, January 24, 1983. Indian bingo has been recognized as a means of supporting this federal policy, and the Secretary of the Interior has indicated that he would "strongly oppose" efforts to subject Indian bingo operations to state regulatory laws. *Cabazon, supra,* at 904-905. Clearly, current federal policy is to encourage tribal self-government and economic development. *See New Mexico v. Mescalero Apache Tribe,* 462 U.S. 324 (1983). Such policy should weigh heavily in this balancing of interests.

The Quapaws and Senecas also have compelling interests at stake. The Indian bingo operations provide a major source of revenue to fund essential tribal services and are a significant source of employment for tribal members. *See,* Findings of Fact 3(J)(stipulated by the parties). In addition, since revenue raising is a traditional governmental function, the bingo operations are clearly a part of the tribes' process of self-government. *See, Cabazon, supra,* at 906. The Oklahoma Supreme Court erroneously found little infringement upon tribal sovereignty by enforcement of the state's bingo laws because it was "unable to ascertain that bingo is a traditional tribal activity or one involving essential tribal functions." *Seneca-Cayuga* at 90.

The Oklahoma Supreme Court offered little guidance to the lower court as to what state interests were involved in determining whether the state could properly assert jurisdiction over Indian bingo. The court noted that

"states have a legitimate interest in preventing infiltration of organized crime," *Seneca-Cayuga* at 91, but federal criminal law would apply to any such organized crime offenses. *See, United States v. Farris,* 624 F.2d 890, 893 (9th Cir. 1980) (federal laws generally applicable throughout the United States apply with equal force to Indians in Indian Country). Under the Assimilative Crimes Act, 18 U.S.C. §13, a state's prohibitory, but not regulatory, laws can be enforced by the federal government in Indian Country. *Id.* at 897; *U.S. v. Marcyes,* 557 F.2d 1361, 1364 (9th Cir. 1977). Thus, concern regarding organized crime is a matter for federal authorities.

The Oklahoma Supreme Court also noted that the State has an interest in "protecting the State's overall economy and tax base," *Seneca-Cayuga* at 91, but the court failed to explain how the mere possibility that Indian bingo could "siphon off needed state revenues" was adequate justification for enforcing its criminal laws in Indian country. *See, Seneca-Cayuga* at 90-91. Under these circumstances, there is no adequately defined state interest which can outweigh the fundamental tribal and federal interests which would be undermined by allowing the State to assert jurisdiction over the Indian bingo operations herein. For these reasons, and based on the Court's Findings of Fact and Conclusions of Law entered herein, the Movants' Application for Preliminary Injunction was granted.

II. FINDINGS OF FACT

1. Plaintiff tribes are Indian tribes with governing bodies recognized by the Secretary of the Interior and the

matter in controversy arises under the Constitution, laws and treaties of the United States.

2. Plaintiff tribes seek to redress alleged deprivations under color of state law of their rights, privileges and immunities under the Constitution.

3. The parties have stipulated to the following:[3]

A. Members of the Quapaw and Seneca-Cayuga tribes are citizens of the United States and the State of Oklahoma.

B. That while gambling is a traditional Indian function, Bingo has only been operated by Tribes in the past decade.

C. The buildings in which bingo operations are held and are to be held are used exclusively for bingo and are on land held in trust for the tribes by the United States.

D. The Seneca-Cayuga Tribe operates bingo games three days or more per week and on Sundays and all or most games are in violation of State of Oklahoma statutes. The Quapaw bingo operations are not expected to comply with Oklahoma regulations on size of prizes or days of operation. The Quapaw bingo operation is expected to comply with all applicable federal and tribal laws and regulations.

E. The customers of the Seneca-Cayuga bingo games are predominantly non-Indian and non-Seneca-

[3] The parties stipulated extensively to both testimonial and documentary evidence in addition to that set forth herein.

Cayuga. The customers of the Quapaw bingo games will be predominantly non-Indian or non-Quapaw.

F. The Quapaw tribe estimates the bingo hall will provide employment for more than sixty tribal members.

G. Close to 50 percent of employable members of the Quapaw tribe are unemployed. More than 25 to 30 percent are on public assistance.

H. Of the 700 members of the Seneca-Cayuga tribe living in the immediate area, approximately 350 live below the poverty level. The rate of employment within the tribe is about 35 percent.

I. The Quapaws operated a variety of programs for the health and welfare of tribe members, including a community health outreach program, programs for the elderly, housing improvement programs and education programs. The Seneca-Cayuga tribe is affiliated with a number of health and welfare programs including, Indian Health Clinic serving some 28,600 cases per year, a housing authority providing 250 low rent units and 236 home acquisition units, a hot meal program for the elderly, an Indian Child welfare program, a summer youth employment program and an adult education program.

J. The Seneca-Cayuga bingo operation is wholly owned and operated by the tribe. It produces an average net income of $312,000 per year and employs 20 tribe members. The income from the bingo operation subsidizes the various tribal programs outlined above (I).

K. Quapaw tribal programs are severely limited by lack of available funds and federal cutbacks have intensified the situation.

L. If not delayed by litigation, the Quapaws expect to open their bingo operation within 30 days. The tribe estimates the bingo operations will provide several hundred thousand dollars a year to fund tribal programs.

4. Current federal policy is to promote Indian self-government and economic self-sufficiency. [See discussion of the President's Statement on Indian Policy and remarks by the Secretary of the Interior, *supra* 14.]

5. Enforcement of the Oklahoma bingo laws to bingo operations of the Quapaw and Seneca-Cayuga tribes would have a chilling effect on those operations, reduce revenue to the tribe needed to support essential services, necessitate expenditure of significant amounts of money for litigation costs and cost the tribes a significant number of needed jobs.

6. Enjoining the State from enforcing its bingo laws in Indian Country would cause minimal harm to the State, since the State has identified no significant cognizable interest at stake.

7. The public interest favors a policy of encouraging Indian self-government and economic self-sufficiency.

8. The Oklahoma bingo laws at issue, 21 Okl.St.Ann. §951.1 *et seq*. regulate the operation of bingo, but do not make participation in bingo a crime.

III. CONCLUSIONS OF LAW

1. This Court has jurisdiction of this matter by virtue of 28 U.S.C. §§1331, 1343(a)(3) and 1362.

2. Any Finding of Fact properly characterized a Conclusion of Law is incorporated herein.

3. Indians were once held to be free from state jurisdiction, *Rice v. Olson*, 324 U.S. 786, 789 (1945); *Worcester v. Georgia*, 6 Pet. 515 (1832), but it is no longer the law that state laws can have no force in Indian Country. *See, Oneida Indian Nation v. County of Oneida*, 414 U.S. 661, 667-68 (1974); *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134 (1980); *Moe v. Salish & Kootenai Tribes*, 425 U.S. 463 (1976); *Puyallup Tribe v. Washington Game Dept.*, 433 U.S. 165 (1977); *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 331 (1982).

4. Indian tribes are unique aggregations possessing "attributes of sovereignty over both their members and their territory." *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142, *quoting United States v. Mazurie*, 419 U. S. 544, 557 (1975). Tribes retain any aspect of their historical sovereignty "not inconsistent with the overriding interests of the National Government," *Washington v. Confederated Tribes, supra* at 153, including the power of regulating their internal and social relations. *United States v. Kagama*, 118 U.S. 375, 381-82 (1886), cited in *United States v. Wheeler*, 435 U.S. 313, 322 (1978).

5. Absent governing Acts of Congress, a state may not act in a manner which infringes on the right of reservation Indians to make their own laws and be governed by them. *Williams v. Lee*, 358 U.S. 217, 219-220 (1959).

6. PL-280 is a "governing Act of Congress," *Kennerly, supra*, at 427, which establishes the manner in

which states may assume jurisdiction over civil and criminal matters in Indian country.

7. Oklahoma did not amend its constitution or take other "affirmative legislative action" to assume jurisdiction in Indian Country under the original version of PL-280. Oklahoma has not sought tribal consent to state jurisdiction over Indian Country under the amended version of PL-280. *Seneca-Cayuga* at 87-88. Therefore, Oklahoma has not assumed civil or criminal jurisdiction in Indian Country pursuant to PL-280.

8. Absent Congressional authority, the determination of whether state laws are enforceable in Indian country requires a "particularized inquiry" into "the nature of state, federal, and tribal interests at stake." *Cabazon, supra, (quoting Bracker, supra,* at 142). Under this inquiry, state laws may not be applied to Indian Country if this application would (1) interfere with Indian self-government, or (2) impair a right granted or reserved by federal law. *Cabazon* at 903; *Rice v. Rehner,* 463 U.S. 713, 718 (1983) (*quoting, McClanahan, supra,* at 172).

9. There exists a strong federal policy to encourage and foster tribal self-government and to promote Indian economic development. *Mescalero, supra,*at 324; *Statement by the President: Indian Policy, supra. See,* discussion in Introduction at page 14.

10. Oklahoma's bingo laws regulate the *operation* of certain types of gambling, but do not make it a crime to *participate* in the gambling activity. Therefore, the laws are directed at the conduct of Indians in Indian Country, not the conduct of non-Indians. *See, Cabazon* at 904.

11. For a preliminary injunction to issue, four criteria must be met: 1) likelihood that movant will prevail on the merits; 2) the possibility of irreparable harm to movant if the injunction is not issued; 3) the balance between the harm and the injury that granting the injunction would inflict on defendants; and 4) public policy. *Lundgrin v. Claytor,* 619 F.2d 61, 63 (10th Cir. 1980).

12. For the reasons set forth in the Introduction, *supra,* the Court concludes that there is substantial likelihood that the Plaintiffs herein will prevail on the merits in contending that the Oklahoma bingo laws do not apply in Indian Country.

13. The Court concludes that the Plaintiffs will suffer irreparable injury if an injunction is not issued. Enforcement of the State's bingo laws would have a chilling effect on the Indian bingo operations, cost the tribes significant sums of money for litigation, reduce revenue needed for essential tribal services and cost a significant number of jobs for tribe members.

14. The Court concludes that the harm to the Indian tribes if an injunction is not issued far outweighs the potential harm to the State if an injunction is issued. The State has identified no substantial interest which will be adversely affected by an injunction.

15. The Court concludes that granting an injunction will serve the public interest by fostering the announced public policies of allowing Indian tribes to make their own laws and be governed by them and encouraging tribal self-reliance through economic development.

For these reasons, the Court concludes that Ottawa County, Oklahoma, District Court Judge Jon D. Douthitt should be enjoined from proceeding with any further action in this matter and that the District Attorney and Sheriff of Ottawa County, Oklahoma, and their assistants and employees, should be enjoined from seeking to enforce the Oklahoma bingo laws in the Indian Country herein.

This matter is set for trial on September 22, 1986, at 9 a.m. Any additional parties are to be added by June 13, 1986. The parties are to exchange the names and addresses of all witnesses, including expert witnesses, by June 27, 1986. A brief description of the testimony of any witness whose deposition has not been taken should be included. Deadline for discovery is July 11, 1986. Dispositive motions should be filed by July 28, 1986, and responses thereto by August 8, 1986. An agreed pre-trial order should be filed by September 8, 1986, and proposed Findings of Fact and Conclusions of Law by September 15, 1986.

DATED this 5th day of June, 1986.

/s/ Thomas R. Brett
THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPENDIX E

25 U.S.C. 1321

ASSUMPTION BY STATE OF CRIMINAL JURISDICTION

(a) Consent of United States; force and effect of criminal laws

The consent of the United States if hereby given to any State not having jurisdiction over criminal offenses committed by or agent Indians in the areas of Indian country situated within such State to assume, with the consent of the Indian tribe occupying the particular Indian Country or part thereof which could be affected by such assumption, such measure of jurisdiction over any or all of such offenses committed within such Indian Country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over any such offense committed elsewhere within the State, and the criminal laws of such State shall have the same force and effect within such Indian Country or part thereof as they have elsewhere within that State.

(b) Alienation, encumbrance, taxation and use of property; hunting, trapping, or fishing.

Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or

shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

APPENDIX F

25 U.S.C. 1322

ASSUMPTION BY STATE OF CIVIL JURISDICTION

(a) Consent of United States; force and effect of civil laws

The consent of the United States is hereby given to any State now having jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian Country situated within such State to assume, with the consent of the tribe occupying the particular Indian Country or part thereof which would be affected by such assumption, such measure of jurisdiction over any or all such civil causes of action arising within such Indian Country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian Country or part thereof as they have elsewhere within that State.

(b) Alienation, encumbrance, taxation, use and probate of property.

Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner

inconsistent with any Federal treaty, agreement, or statute, or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

(c) Force and effect of tribal ordinance or customs

Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in this determination of civil causes of action pursuant to this section.

APPENDIX G

25 U.S.C. 1323.

RETROCESSION OF JURISDICTION BY STATE

(a) The United States is authorized to accept a retrocession by any State of all or any measure of the criminal or civil jurisdiction, or both, acquired by such State pursuant to the provisions of section 1162 of Title 18, section 1360 of Title 28, or section 7 of the Act of August 15, 1953 (67 Stat. 588), as it was in effect prior to its repeal by subsection (b) of this section.

(b) Section 7 of the Act of August 15, 1953 (67 Stat. 588), is hereby repealed, but such repeal shall not affect any cession of jurisdiction made pursuant to such section prior to its repeal.
